



Via E-mail

October 10, 2014

Richard Albright, ECL Director
U.S. Environmental Protection Agency - Region 10
Office of Environmental Cleanup – ECL-117
1200 Sixth Avenue - Suite 900
Seattle, Washington 98101

Subject: Reply to EPA's October 1, 2014 Response to LSS Dispute
Arkema Inc. Portland Facility
Administrative Order on Consent for Removal Action
U.S. EPA Region 10 Docket No. CERCLA 10-2005-0191

Dear Mr. Albright:

This letter replies to the October 1, 2014 EPA submittal ("EPA October 1 letter"), which responds to Legacy Site Services LLC's ("LSS"), agent for Arkema Inc. ("Arkema"), September 12, 2014 letter. The dispute process was invoked by LSS pursuant to section XVI, paragraph 50 of the June 27, 2005 Administrative Order on Consent for Removal Action ("Removal Action AOC") entered into by Arkema and EPA. The EPA October 1 letter provides EPA "Counter Responses" to LSS' September 12 responses to EPA's positions. Issues have been addressed in previous submittals by LSS dated July 3, 2014 and September 12, 2014 and by EPA dated September 5, 2014 and October 1, 2014 letter. This reply focuses solely on the EPA October 1 letter "Counter Responses."

LSS Response to EPA's Introductory Statements and Arguments that Arkema Can Not Request Additional RI Sampling Under Its 2005 AOC

At the outset, LSS must set the record straight. EPA grossly mischaracterizes LSS statements about the scope of the Removal Action AOC. Of course, the area off the Arkema site is included in the Portland Harbor ("PH") RI/FS process. Of course, the Arkema Removal Action did not replace the PH RI/FS, nor is it superior to the PH RI/FS. And of course, the PH RI/FS schedule is important. Indeed, Arkema is a party to the PH Administrative Order on Consent. However, the analysis does not and cannot end there. Arkema has done extensive work and expended much effort to comply with the Removal Action AOC. LSS has spent millions of dollars in good faith advancing the early action, with approximately \$3.3 million to date just in EPA oversight charges.

Legacy Site Services LLC
468 Thomas Jones Way
Exton, PA 19341-2528
Tel: 610 594-4421

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The importance of an early cleanup action to LSS is reflected in the June 14, 2011 settlement proposal in which LSS sought to conduct a removal action expeditiously (see Exhibit 1 to the LSS September 12, 2014 letter). EPA's rejection of this settlement proposal, and its ultimate decision not to allow a removal action at all, was a significant blow to LSS' plans for a timely cleanup of the sediments adjacent to the Arkema Site. Nonetheless, LSS accepted EPA's proposal to defer cleanup based on EPA's agreement that LSS could at least collect data without further delay that is necessary for LSS to effectively evaluate remedial alternatives. The April 30 Work Plan reflects the information LSS needs to prepare for the remediation of the sediments adjacent to Arkema.

Now, however, the importance of this effort and the April 30 Work Plan seem to be minimized by EPA. Never has LSS been in a situation where a government agency has summarily dismissed more sampling. Furthermore, EPA's "offer" to amend the Removal Action AOC to allow further sampling for remedial design is delaying important work, and LSS is not interested in that delay mechanism. Why wait?

Both LSS and EPA can bandy arguments back and forth; but, it is very simple. Why did EPA come to the following agreement with LSS, as memorialized in the March 31, 2014 agreement?

"EPA and Arkema agree that the Removal Action AOC will be terminated, and Arkema is released from all obligations under the AOC, except for ongoing obligations for access to information (Section IX.), record retention (Section X.), and payment of EPA and Tribal oversight costs incurred prior to the termination date (Section XV.). LSS seeks to have one last round of sampling conducted under the AOC, and will be submitting a proposed work plan no later than April 30, 2014 for EPA's review and approval or disapproval. EPA and Arkema will execute a termination agreement after any approved sampling is conducted and data report submitted on the approved schedule."

This agreement was made just 6 months ago. EPA's arguments pointing to Removal Action AOC provisions now as a hammer to dissuade sampling, blaming the PH RI/FS schedule, and painting LSS as disruptive fall flat. If this is truly how EPA felt, then EPA should have said so at the time and spared LSS the time and expense of assembling a work plan that was only going to be quickly dismissed. Furthermore, not much is new on the PH RI/FS schedule in the past 6 – 7 months since EPA and LSS sat across from each other in Seattle and later came to the March 31 agreement. LSS is more than willing to uphold its end of the deal; however, we do not see any good faith attempt by EPA to uphold its end on this critical component of the March 31 agreement.

Despite the volume of paper submitted by both sides, the request is simple: LSS merely asks for the fair implementation of the terms of its March 31, 2014 agreement with EPA and the opportunity to conduct valuable fieldwork without undue delay.

LSS Response to EPA's Arguments that Approving the Work Plan Would be Too Time and/or Resource Intensive for EPA (pp. 2-4 of LSS' September 12 letter; pp. 4-7 of the EPA October 1 letter)

EPA's claims can be summarized as follows:

- ☐ Obtaining agreement and approval of a work plan will be time consuming;
- ☐ EPA staff resources are limited; and
- ☐ Sufficient data exists at the Arkema site to complete the PH RI/FS and select a remedy.

EPA's statements are specious. The facts show that EPA has selectively chosen to commit resources to investigative work at the RM11E and Gasco sites, while arbitrarily choosing to ignore similar work at the Arkema site. EPA states that "it is reasonable for EPA not to jeopardize the ROD schedule with unnecessary data gathering..." (p. 6, EPA October 1 letter). However, in the very next sentence EPA contradicts itself by stating, "it should be recognized that sampling activities at the RM11E Project Area and Gasco early action site are focused on facilitating remedial design post-ROD so those areas are ready to start cleanup as soon after the ROD as possible." (p. 6, EPA October 1 letter). EPA even reiterates its support for additional sampling at Arkema stating, "EPA is supportive of additional characterization activities that target remedial design..." (p. 6, EPA October 1 letter) but then inexplicably ties those additional investigations to an unnecessary amended order, despite the terms of the March 31, 2014 agreement between EPA and LSS. LSS questions the different treatment.

This double standard is further illustrated in EPA's statement that (p. 4, October 1 letter), "The purpose of the River Mile 11 East (RM11E) project ...is to perform supplemental RI/FS work in support of preliminary design activities for the RM11E Project area." This is the exact same reason for the LSS proposed work at the Arkema site, yet RM11E work proceeds and Arkema work is denied. There is just no valid reason to not perform the additional work requested by LSS.

LSS Response to EPA Comments Incorrectly Claiming that the Existing Data Are Good Enough for an RI/FS Without Filling Data Gaps (pp. 4-9 of LSS' September 12 letter; pp. 7-14 of the EPA October 1 letter)

EPA's positions can be summarized as follows:

- ☐ EPA agrees that data may be collected to support remedial design activities;
- ☐ EPA has agreed to incorporate data collected previously by LSS in support of the Arkema EE/CA into the PH FS;
- ☐ LSS' concerns about how EPA is analyzing data in the FS can be raised under the PH RI/FS AOC process;
- ☐ Sediment management areas in the Arkema area are based on DDx and dioxin/furan RALs, not driven by comprehensive benthic risk areas (CBRA);
- ☐ Any further sampling to refine benthic risk areas would not significantly change the areal extent of the remedy decision area;
- ☐ For the purposes of the PH FS, existing sediment data is considered adequate to identify contaminants and exposure pathways contributing risk; and
- ☐ Further PCB characterization to correct elevated detection limits may be confirmed during remedial design.

With respect to the areas of potential risk at the Arkema site, EPA's definitive statements in the EPA October 1 letter overstate the status of the PH FS. EPA states, "Although the area offshore of the Arkema site been identified (sic) as a benthic risk area based on results of the risk assessment, the analysis of areas and volumes of contamination in the FS is primarily focused on the distribution of DDx and dioxins and furans in sediment (see above figure)." (p. 12, EPA October 1 letter). This simply is not true. First, RALs are still being finalized by EPA and thus have yet to be provided to the LWG; therefore, potential remediation areas based on these RALs, e.g., dioxins and furans, are still unresolved. Second, during the FS review and negotiation process, maps have been prepared that show the CBRA extending well beyond several of the RAL footprints shown on the figure from page 11 of the EPA October 1 letter. Therefore, to make a definitive statement about contaminant footprints being larger than the CBRA footprints is just not possible at this time. With this uncertainty, a definitive statement about the lack of a need for additional investigation is simply unsubstantiated. In fact, the uncertainty gives all the more reason to collect this data now.

On other technical issues, EPA even concurs that there are still data gaps (e.g., chloride contribution to toxicity, elevated PCB detection limits potentially affecting remediation areas); however, EPA again inexplicably defers resolving those issues to a later time.

LSS Response to EPA Comments Related to Principal Threat Waste/Nonaqueous Phase Liquid (pp. 9-10 of LSS' September 12 letter; pp. 14-15 of the EPA October 1 letter)

EPA's arguments are that:

- ☐ EPA disagrees that chlorobenzene NAPL is not present in Arkema sediment; and
- ☐ The solubility rule of thumb is a secondary line of evidence.

In consideration of the chlorobenzene NAPL question, EPA has provided no new data in this response. A data table provided in the EPA October 1 letter is reworked from information already provided in EPA's 2013 NAPL evaluation memorandum. As previously addressed in the LSS September 12 letter, EPA's memorandum has many technical issues. The primary issue with the information provided by EPA is the apparent assumption that any NAPL "globule" is equivalent to chlorobenzene NAPL (p. 14, EPA October 1 letter). LSS makes the following technical points with respect to EPA's evaluation:

- ☐ Observations of "oily material," "brown oil globules," and "strong odor" do not equate to chlorobenzene NAPL. In fact, there are no field tests that have been conducted to identify and distinguish chlorobenzene NAPL from NAPL that might come from more common sources (e.g., petroleum NAPL from oil storage facilities).
- ☐ To the contrary, laboratory analysis for chlorobenzene has been conducted on dozens of sediment samples (all biased to worst case based on field observation), and chlorobenzene NAPL has not been measured anywhere at the Arkema site.
- ☐ Chlorobenzene NAPL observed in the upland area of the site is not brown or oily in appearance.

- Arkema site sediments are immediately downstream of a petroleum storage facility and the presence of discontinuous isolated oil droplets (likely petroleum) in sediment at selected locations should not be a surprise.
- The Arkema shoreline is comprised largely of dredge spoils placed over the former heavily vegetated shoreline. Tannins are evident and woody fragments and fibers are evident in the sediment cores throughout. Decaying organic material creates oily looking sheens.
- If the presence of random oil globules at a site is a criterion for NAPL or a principle threat waste (PTW) determination, it is likely that all Portland Harbor would have sediment identified as a PTW. As stated in the LSS September 12 letter, LSS agrees with the LWG in that random globules do not equate to NAPL.

With respect to the solubility rule of thumb being applied to a physical solid, on the one hand, LSS is encouraged that EPA appears to be backing away from this line of evidence; however, LSS is concerned about what EPA means by its statement, “EPA is currently evaluating the solubility rule-of-thumb and its applicability to the identification of PTW at the Portland Harbor Site for purposes of the FS evaluation...”. LSS agrees with the position taken by the LWG that the solubility rule of thumb is at best a poor predictor of NAPL and furthermore is absolutely incorrect on any level if trying to apply it to a solid.

CONCLUSION

In the conclusion of the EPA October 1 letter, EPA asks for a determination from the dispute official that it was appropriate for EPA to disapprove the April 30 Work Plan and that the Removal Action AOC be terminated. In the alternative, EPA asks the dispute official to provide a process to amend the Removal Action AOC for sampling with a remedial design scope. LSS submits that these additional steps are completely unnecessary and unduly complicate the situation. An amendment would create more work for the EPA team, and therefore would take up more of EPA’s resources, which instead could be more effectively used towards the previously submitted April 30 Work Plan.

The LSS request is simple. LSS merely asks for the fair implementation of the terms of its March 31, 2014 agreement with EPA and the opportunity to conduct valuable fieldwork without undue delay. Therefore, LSS requests that the Director allow LSS to move forward expeditiously with the April 30 Work Plan. LSS has shown that there is no valid reason not to do so, as all the sampling work proposed will be done in accordance with existing, approved QA/QC Plans. After the millions of dollars that LSS has spent seeking to perform a removal action, and EPA’s decision not to allow such a removal, the least EPA should do is afford LSS the opportunity to collect samples necessary to properly evaluate sediments adjacent to the Arkema Site.

LSS requests a meeting at your earliest convenience. We appreciate the opportunity to continue to work with EPA to resolve these issues. Please contact me at (610) 594-4430 if you have any questions pertaining to this letter and to set up a meeting. Thank you.

Sincerely,

October 10, 2014

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Legacy Site Services LLC

A handwritten signature in black ink, appearing to read 'J. Todd Slater', is written over a light gray dotted grid background.

J. Todd Slater
Assistant Vice President

cc: (electronic) Shawn Blocker, EPA
Sean Sheldrake, EPA
Lori Cora, EPA
Kristine Koch, EPA
Tom Gainer, Oregon DEQ
Rick Kepler, Oregon Department of Fish and Wildlife
Rob Neely, NOAA Coastal Resources Coordination
Dr. Nancy Munn, NOAA Fisheries
Jeremy Buck, US Fish and Wildlife
Preston Sleeper, US Department of Interior
Brian Cunningham, Confederated Tribes of the Warm Springs Reservation of
Oregon
Rose Longoria, Confederated Tribes and Bands of the Yakama Nation
Pete Wakeland, Confederated Tribes of the Grand Ronde Community of
Oregon
Tom Downey, Confederated Tribe of the Siletz Indians
Audie Huber, Confederated Tribes of the Umatilla Indian Reservation
Erin Madden, Nez Perce Tribe
Jean Lee, Environment International Ltd.
Jennifer Peterson, DEQ
Matt McClincy, DEQ
Mike Poulsen, DEQ
Lance Peterson, CDM